

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO ALL
ACTIONS

PLAINTIFFS' UNOPPOSED MOTION TO UNSEAL THE FOLLOWING PLEADINGS:

**(1) PLAINTIFFS' SUPPLEMENT TO THEIR OPPOSITION TO B. BRAUN OF
AMERICA'S MOTION TO DISMISS THE AMENDED MASTER CONSOLIDATED
COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO
COMPEL B. BRAUN OF AMERICA TO MAKE SUPPLEMENTAL 30(B)(6)
DESIGNATION, AND (2) MOTION TO ADD B. BRAUN MEDICAL, INC. AS A
DEFENDANT**

Plaintiffs, by their attorneys, respectfully move this Court pursuant to the Protective Order entered on December 13, 2002, to unseal: (1) Plaintiffs' Supplement to Their Opposition to B. Braun of America's Motion to Dismiss the Amended Master Consolidated Complaint and Memorandum of Law in Support of Their Motion to Compel B. Braun of America to Make Supplemental 30(b)(6) Designation ("Supplement"); and (2) Motion to Add B. Braun Medical, Inc. as a Defendant ("Motion to Add") (collectively "Plaintiffs' Briefs").

1. Pursuant to Paragraph 14 of the Protective Order (Dec. 13, 2002) in this case, the parties may designate deposition testimony as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Within thirty (30) days of receipt of the transcript, the deponent and/or his or her counsel may redesignate or remove such designation from the transcript.

2. At the beginning of the August 17, 2004 deposition of Ms. Cathy Codrea, the 30(b)(6) designee for B. Braun of America, Inc. ("BBA"), counsel for BBA asked that the

deposition transcript (hereinafter “Codrea Transcript”) be designated HIGHLY CONFIDENTIAL, but stated that BBA would revisit that designation upon receipt and review of the transcript.

3. Pursuant to Paragraph 15 of the Protective Order, parties filing pleadings with the Court that contain “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information shall be filed under seal in an enveloped marked “CONFIDENTIAL – Filed Under Seal Pursuant to Court Order” or “HIGHLY CONFIDENTIAL -- Filed Under Seal Pursuant to Court Order.”

4. Plaintiffs’ Supplement and Motion to Add cited significantly to the Codrea Transcript. Accordingly, because of BBA’s counsel’s designation of the Codrea Transcript as HIGHLY CONFIDENTIAL, plaintiffs filed their Supplement and Motion to Add under seal. Plaintiffs noted that they would revisit the issue after BBA’s counsel reviewed the transcript and file unredacted versions of these pleadings with the Court in the event that BBA elected to remove that designation from the Codrea Transcript.

5. On September 10, 2004, BBA filed its Opposition to plaintiffs’ Motion to Compel, Opposition to plaintiffs’ Motion to Add, and Renewed Motion to Dismiss Renewed Motion to Dismiss the Amended Master Consolidated Class Action Complaint. None of these pleadings were filed under seal, even though BBA’s Opposition to plaintiffs’ Motion to Compel, in particular, quoted heavily from the Codrea Transcript. (*See* BBA’s Opposition to plaintiffs’ Motion to Compel, attached hereto as Exhibit A, at 13-14).

6. Further, on September 15, 2004, BBA’s counsel chose to remove the HIGHLY CONFIDENTIAL designation on all portions of the Codrea Transcript, except with respect to Exhibits 8 and 9. (*See* Letter of Dan Attridge, P.C. to David Walsh, attached hereto as Exhibit B).

7. Although Plaintiffs' Briefs cited extensively to the Codrea Transcript and mentioned the existence of its Exhibits 8 and 9, those briefs did not discuss these Exhibits' contents. Therefore, Plaintiffs' Briefs may be unsealed. However, because the Codrea Transcript (Exhibit 1 to Plaintiffs' Supplement and Exhibit 1 to Plaintiffs' Motion to Add) does discuss Exhibits 8 and 9, which BBA has maintained are HIGHLY CONFIDENTIAL, plaintiffs attach new versions of their Supplement and Motion to Add with redacted copies of the Codrea Transcript and ask that they be substituted for the versions of the Supplement and Motion to Add previously filed under seal (*See* Exhibits C & D hereto; *see also* Redacted Transcript of Cathy Codrea, attached as Exhibit E).

8. Plaintiffs' counsel has conferred with counsel for BBA concerning this motion. BBA does not oppose the relief requested herein.

WHEREFORE plaintiffs respectfully request that the Court enter an order unsealing Plaintiffs' Supplement and Plaintiffs' Motion to Add, and all other relief that this Court deems just and proper.

Dated: September 20, 2004

By: /s/ Thomas M. Sobol
One of Plaintiffs' Counsel

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CERTIFICATE OF SERVICE BY VERILAW

Docket No. MDL 1456

I, Thomas M. Sobol, hereby certify that I am one of plaintiffs' attorneys and that, on September 20, 2004, I caused copies of PLAINTIFFS' UNOPPOSED MOTION TO UNSEAL PLAINTIFFS' SUPPLEMENT TO THEIR OPPOSITION TO B. BRAUN OF AMERICA'S MOTION TO DISMISS THE AMENDED MASTER CONSOLIDATED COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO COMPEL B. BRAUN OF AMERICA TO MAKE SUPPLEMENTAL 30(B)(6) DESIGNATION AND MOTION TO ADD B. BRAUN MEDICAL, INC. AS A DEFENDANT to be served on all counsel of record by causing same to be posted electronically via Verilaw.

Dated: September 20, 2004

/s/ Thomas M. Sobol

Thomas M. Sobol